

Minutes of the Telephonic Meeting of the
Arizona Game and Fish Commission
Friday, October 29, 2004 – 12:30 p.m.
Arizona State Fairgrounds – Wildlife Building
1826 W. McDowell Road
Phoenix, AZ

PRESENT – On Site: (Commission)

Commissioner W. Hays Gilstrap
Commissioner William H. McLean

(Director's Staff)

Director Duane L. Shroufe
Deputy Director Steve K. Ferrell
Assistant Attorney General James Odenkirk
Assistant Attorney General Shelley Cutts

PRESENT – Phone

Chairman Sue Chilton
Commissioner Joe Melton

Chairman Chilton called the meeting to order at 12:31 p.m. The meeting followed an agenda dated October 25, 2004, for a special meeting of the Commission. Roll call was taken and four Commissioners were present. Other Department staff present were: Dana Yost, Executive Staff Assistant; Bruce Taubert, Assistant Director WMD; Richard Rico, Assistant Director SSD; Larry Riley, Fisheries Branch Chief; Terry Johnson, Nongame Branch Chief; Larry Voyles, Regional Supervisor Region IV; Eric Swanson, Fisheries Branch; Todd Pringle, Fisheries Branch; Fred Bloom, Development Branch; Carlos Ramiriz, Rulewriter; Tony Guiles, Legislative Liaison; John Shelley, Information Systems; Gary Schaffer, Audio Visual Branch.

1. Executive Session

- a. Legal Counsel regarding the Silverbell Bighorn Sheep Herd. The Commission may vote to meet in Executive Session in accordance with A.R.S. sections 38-431.03(A)(3) and (4) for the purpose of discussing and consulting with legal counsel in order to consider its position and instruct legal counsel regarding the Commission's position on possible settlement or litigation over the damages associated with the epizootic episode in the Silverbell Bighorn Sheep Herd.

Motion: Melton moved and Chilton seconded THAT WE GO INTO EXECUTIVE SESSION.

Discussion: Commissioner Gilstrap stated that people were here ready to do presentations, that maybe we could defer the Executive Session to the latter part of the meeting and let those sitting in room go with their presentations.

Chairman Chilton: Let's go on Mr. Director to the next item and we will go back to the Executive Session at a later point.

2. Creating a Two-Year Schedule for Adoption of Commission Orders 25, 40, 41, 42, and 43.

Presenters: Lawrence M. Riley, Fisheries Branch Chief, and Terry B. Johnson, Nongame Branch Chief.

Mr. Riley: Madame Chairman, Commissioners, thank you for the opportunity. I am here to discuss a concept that we broached last year at this time and that was the possibility of making a Commission adoption process for these Commission Orders a two-year process. There are savings that can be accrued from the two-year process. The Commission does not compromise its authority and retains its authority to make changes to Commission Orders with appropriate public notice and to make emergency changes to Commission Orders per rule and direction. We did ask the public what they thought about this, in particular with regard to Commission Order 40, the fishing regulations, and the public was very supportive of this approach. Unless there are some questions I can read a recommendation.

Chairman Chilton: Please do.

Recommendation: The Department recommends THAT THE COMMISSION VOTE TO ADOPT A TWO-YEAR SCHEDULE FOR CONSIDERATION AND ADOPTION OF COMMISSION ORDERS FOR RAPTORS (25), FISH (40), AMPHIBIANS (41) CRUSTACEANS AND MOLLUSKS (42), AND AQUATIC REPTILES (43).

Motion: Melton moved and McLean seconded THAT THE COMMISSION ADOPT THE DEPARTMENT'S RECOMMENDATION.

Vote: Unanimous

Commissioner Gilstrap: Since the Fishery Branch is such an integral part of our overall activity and if we are going to be visited by them on a regulation standpoint every other year, I would ask that in the off year that we have a presentation by those branches to give us a status report, an opportunity to tell us of the good things they're doing, the long- and short-term plans and kind of how the program is going collectively.

Chairman Chilton: Is there further discussion on this issue? There was none.

Director Shroufe: Madame Chairman, are you ready to continue to Item #3?

Chairman Chilton: Yes

3. Request to Amend Commission Order 40 (Fish), Concerning Specific Proposals for Bag and Possession Limits, Special Regulations, and Specific Closures for Sport Fishing for Calendar Years 2005 and 2006.

Presenter: Lawrence M. Riley, Fisheries Branch Chief.

Mr. Riley: Madame Chairman, Commissioners, this we do each year, or in the future every two years. Madame Chairman, I would appreciate your guidance. We have a series of proposed amendments to Commission Order 40, which we can deal with individually or we can deal with them as a group and keep this brief. For the first item, the first amendment we do have some guests here from the City of Avondale, who I think would like to talk with the Commission about

the Commission Order amendment and I did have a discussion earlier today with Councilman Carroll and I told him that I would inform you of his perspectives as well. How should we best proceed with this?

Chairman Chilton: I think we could hear the presentation from the people from Avondale.

Mr. Riley: Very fine. Let me preface very quickly with the proposed amendment and the reasons for it. This would establish special fishing regulations at Crystal Gardens Water Treatment Facility in the City of Avondale for catch and release only fishing for all resident species and to require the use of single barbless hooks only. We worked on this proposal with staff from the City of Avondale. There has been some degree of discussion and controversy with the public with regard to this proposal. I believe Mr. Davis is here from the City of Avondale and he can probably give you a pretty good overview from the City's perspective.

Dan Davis: Madame Chairman, I am the Director of Community Recreations Services for the City of Avondale, 11465 Civic Center Drive, Avondale, AZ. I appreciate the opportunity in working with staff from AGFD regarding fishing regulations at the Crystal Gardens Water Treatment Facility. Crystal Gardens is a residential subdivision within the City of Avondale. It comprises a water treatment facility that surrounds the residential development and comprises 17 interconnecting water-lakes that sit in the middle of the residential subdivision building units. The issue with the water treatment facility as I stated is it is used for water quality purposes for our recharge within the Avondale area. Water is derived from the CAP water area within the city and then is purified and redelivered back into our water distribution system within the city for our residents. From our perspective, the issue before us is first and foremost the water quality issue to protect the water source for our community. The water treatment facility also serves as a public open space amenity, obviously for not only the residents of Crystal Gardens but also the entire City of Avondale.

Back in October 2002, the City of Avondale City Council had instituted fishing regulations through our local code. We were unaware of the stipulations of the water source being the driving factor behind AGFD being the statutory agency required for making rules regarding fishing. So, in 2002 with a variety of public meetings that took place within our community, and, quite honestly, it was pretty evenly divided regarding whether fishing should be allowed or not allowed within this water treatment facility. But, with that input, and under again a lot of public scrutiny, the City Council did establish fishing regulations. When we found out in consultation with staff from AGFD that our ordinances were in direct conflict with current statute, we started working with AGFD staff to try and resolve that.

We are here today to basically blend where our conflicts come within our existing ordinance to what the stipulated statutes require for AGFD. What we are requesting from AGFD through the Commission Order 40, is to allow us to continue with the catch and release provision for all resident fish species that are within our water treatment facilities. We do stock those fish with working fish that help with the water quality within those treatment areas. They keep the algae and other plant growth areas within those areas to maintain the water quality. We also have within those treatment facilities liners that basically line the bottoms of those and we are asking for a use of a single barbless hook for any fishing that does occur within the treatment areas. Also, we are going to request the use of only artificial flies and lures, and that any restrictions to the use of any prepared or natural baits except worms. Again, that all focuses back to the water

quality that is required within the water treatment facility. Finally, not necessarily a requirement for you as a Board to look at, but for safety reasons, there is no lighting out there and we have a provision for access to restrict that area to only dawn to dusk. Again, it is a public park area, we know that we can restrict that on our own; however, we want to bring that to your attention as well. So working together with your staff, which I want to compliment the Commission and the staff here at AGFD as they have been very cooperative, we know it is a very delicate issue, we want to provide some moderate recreational fishing for the community, but at the same time, first and foremost has got to be the water quality within that treatment facility. That's our request and I will be happy to answer any questions. I do have other staff members from the City from our Utilities Department that can address any technical questions that might arise, but again, we ask your indulgence and ask for your support in this request.

Chairman Chilton: Commissioners, do you have any questions?

Commissioner Gilstrap: Actually, the question is to Larry Riley. Is there anything inconsistent with our regulations and what Mr. Davis spoke to?

Mr. Riley: Mr. Davis has been an excellent partner, very understanding, and we have worked well I think to meet the expectations of the City. One of the things that is very difficult for us, in terms of the season structure that we use, is restricting the use of natural baits to worms only. Not something we run into very frequently. What we've done in the language that we have proposed in this amendment to Commission Order 40 is to include a note, which is not an enforceable note, but it expresses the request and requirements of the City that anglers use only artificial flies and lures, and, when they do choose to use natural baits, they restrict the use of natural baits to worms only. The rationale behind this from the City's perspective, I believe, comes through their utilities expertise and their concern that other types of natural baits that might frequently be used by anglers, i.e., cheese, corn, bread, a wide range of things, might actually add to the bacterial decomposition in these water treatment lakes. So we certainly understand the City's emphasis from this perspective. We also recognize the City's authority certainly to set park hours and certainly to enforce those hours.

Chairman Chilton: Thank you very much, Larry. Hays, do you have further questions?

Commissioner Gilstrap: Just as a follow up to Mr. Davis, are you comfortable with that footnote that is kind of quasi-enforceable, it becomes a recommendation as opposed to a law?

Mr. Davis: Madame Chairman, Commissioner Gilstrap, yes, absolutely we understand that and working with our park ranger enforcement too, we will be able to help through that educational process as well.

Mr. Riley: Madame Chairman, if I could I did have a discussion with Councilman Carroll and he asked that I express his views. His preference from his interaction with his constituents was that the Commission deny or close the area to fishing. Concerns he expressed had to do with after hours use, with unlawful activities after hours, largely people partying in the area, those kinds of concerns. I believe his concern focused on whether fishing would attract additional people that might be disruptive in after hours periods. Mr. Davis may be able to elaborate on that.

Mr. Davis: Councilman Carroll has expressed his opinion during our council meetings of his desire to restrict fishing entirely. In actuality, that's a view shared by a variety of residents from the community. As I mentioned before in my presentation, this issue has met with a variety of public meetings throughout the last couple of years, and, basically, falls down the line of being split pretty equally 50-50 with folks saying we want fishing and we don't want fishing. So, it is a very, obviously, delicate situation. At this time the direction we have received as staff from our Council is to come here, see if we can meet our existing ordinance with the provisions of the Commission Order 40, and we'll take that back to Council. Obviously, Council will always have the ability through either immediately or future if problems continue to exist, that they could restrict access within that area and not allow fishing by virtue of the access being denied. So, we are going to take this information back to him and brief him on it, but at the same time we wanted to go this step first. We think this is the appropriate way to approach it.

Chairman Chilton: Thank you very much. Further questions?

Commissioner McLean: Mr. Davis I take it that all the access to the fishing areas is through a park area?

Mr. Davis: There are private parks within the HOA locations within the area and then off of thoroughfares and community park streets within the subdivision itself. But, on the map it shows most of the lakes, the treatment facilities themselves actually sit within and are surrounded by individual residential housing units. So, public access is not by one park location where everyone gathers to access. It is actually only derived via walking paths off sidewalks throughout the subdivision.

Commissioner McLean: But it is the City of Avondale who will control that access and patrol that access through your park rangers?

Mr. Davis: That is correct.

Chairman Chilton: Any further questions? If not, could we hear the recommendation of the Department please.

Mr. Riley: The Department has drafted amendment language to Commission Order 40 that would say Crystal Gardens Water Treatment Facility catch and release only for all resident fish species. All fish must be immediately released unharmed, single barbless hooks only, and it includes the note urban license not valid. The City of Avondale requests that anglers use artificial flies and lures and not use any prepared baits with the exception of worms.

Recommendation: The Department's recommendation is THAT THE COMMISSION VOTE TO ADOPT THE PROPOSAL AS WRITTEN, ESTABLISHING CATCH AND RELEASE ONLY FOR ALL RESIDENT FISH SPECIES, ALL FISH MUST BE IMMEDIATELY RELEASED UNHARMED, AND TO REQUIRE THE USE OF SINGLE BARBLESS HOOKS ONLY AT CRYSTAL GARDENS WATER TREATMENT FACILITY.

Motion: Gilstrap moved and Melton seconded motion THAT THE COMMISSION VOTE TO ADOPT THE DEPARTMENT'S RECOMMENDATION.

Vote: Unanimous

Director Shroufe: We are going to continue going through Commission Order 40. Do you have any blue slips for anyone? It is up to the Commission, but there are several recommendations, which you have seen, and have talked to Mr. Riley. I wanted to ask you upfront if you would prefer to hear the recommendations singularly and vote on them individually or if you want him to just read the recommendations for the whole Commission Order 40, and then you vote on them in unison.

Chairman Chilton: I am perfectly happy to do them all together, but what is the wish of everyone else?

Commissioner Melton: That's fine with me.

Commissioner McLean: That's fine with me assuming that Mr. Odenkirk doesn't have a problem with that and since he's not jumping up and down and waving his hands, I assume it's okay.

Director Shroufe: I will ask Mr. Riley to just read the recommendations that you have had in your hands in bold and then you can pass them all with a motion or you can pull some of them out if you want or have a question. Mr. Riley will be available and that way, you can pull some of them out if you have a question. That way we won't have to read those things to ourselves. Mr. Riley if you will go ahead please.

Mr. Riley: The next amendment is for Special Regulations for Deadhorse State Park Lagoons.

Recommendation: The Department recommends THAT THE COMMISSION VOTE TO ADOPT THE PROPOSAL AS WRITTEN, REDUCING THE BAG AND POSSESSION LIMIT TO FOUR TROUT, TWO BASS, FOUR CATFISH, AND TEN SUNFISH AT DEADHORSE STATE PARK LAGOONS.

Recommendation: The Department recommends THAT THE COMMISSION VOTE TO ADOPT THE PROPOSAL AS WRITTEN, REDUCING THE BAG AND POSSESSION LIMIT TO TEN SUNFISH FOR FORTUNA POND. This does not alter the other limits that were previously established for other species.

The next recommendation is for Yuma West Wetlands Pond.

Recommendation: The Department recommends THAT THE COMMISSION VOTE TO ADOPT THE PROPOSAL AS WRITTEN, ESTABLISHING THE BAG AND POSSESSION LIMIT AT TWO TROUT, ONE BASS MINIMUM SIZE THIRTEEN INCHES, TWO CATFISH, AND FIVE SUNFISH AT YUMA WEST WETLANDS POND.

The next recommendation is with regard to the bass daily bag and possession limit at designated urban fishing waters.

Recommendation: The Department recommends THAT THE COMMISSION VOTE TO ADOPT THE PROPOSAL AS WRITTEN, REDUCING THE BAG AND POSSESSION LIMIT

TO TWO BASS, MINIMUM SIZE THIRTEEN INCHES AT ALL DESIGNATED URBAN LAKES.

The next recommendation is with regard to adding Steele Indian School Lake to the urban fishing program beginning January 1, 2005. This would be a new urban lake in our urban fishing program.

Recommendation: The Department recommends THAT THE COMMISSION VOTE TO ADOPT THE PROPOSAL AS WRITTEN, DESIGNATING STEELE INDIAN SCHOOL LAKE AN URBAN LAKE (POND) AND ESTABLISHING LIMITS OF TWO TROUT, TWO CATFISH, ONE BASS MINIMUM SIZE THIRTEEN INCHES, AND FIVE SUNFISH, AT STEELE INDIAN SCHOOL LAKE.

The next recommendation is in regard to our designated urban fishing program lakes that are less than 3 acres in size. This introduces a new concept into our urban fishing program management approach. Because of the size of these lakes we are proposing a reduced bag limit at those locations. That would modify the regulations for those bodies that are less than 3 acres in size, bodies that we would refer to as urban fishing ponds. This would include Papago Ponds 1, 2, and 3; Rio Vista Lake; Canal Lake; and newly adopted Steele Indian School Lake. The bag limits would be 2 trout, that affords unlicensed persons under the age of 14 and blind residents half of that or 1 trout; 2 catfish; 1 bass minimum size thirteen inches; and 5 sunfish.

Recommendation: The Department recommends THAT THE COMMISSION VOTE TO ADOPT THE PROPOSAL AS WRITTEN, REDUCING THE BAG AND POSSESSION LIMIT TO TWO TROUT, TWO CATFISH, ONE BASS MINIMUM SIZE THIRTEEN INCHES, AND FIVE SUNFISH AT CANAL LAKE, PAPAGO PONDS 1, 2, AND 3, RIO VISTA LAKE, AND STEELE INDIAN SCHOOL LAKE.

The next recommendation is with regard to seasons for snagging, bow and arrow, spear and spear gun seasons – legal fish and daily bag and possession limits. The first proposal under this season concept is for Lake Havasu and it would create a snagging season for carp, tilapia, and shad, which would be allowed from January 1 through March 31 and from October 1 through December 31. This is principally for the collection of bait items.

Recommendation: The Department recommends THAT THE COMMISSION VOTE TO ADOPT THE PROPOSAL AS WRITTEN, ESTABLISHING A SNAGGING SEASON FOR CARP, TILAPIA, AND SHAD FROM JANUARY 1 THROUGH MARCH 31 AND FROM OCTOBER 1 THROUGH DECEMBER 31 AT LAKE HAVASU.

The next proposal under this season concept has to do with establishment of spear, spear gun, and bow and arrow seasons at Lake Powell. This is a new wrinkle for Lake Powell. The proposal would allow for carp to be taken by spear fishing and bow and arrow during daylight hours; Striped bass may also be taken by spear fishing and bow and arrow during daylight hours with unlimited harvest for Striped bass up to 30-inches, only one striped bass over 30" may be taken by spear fishing or bow and arrow. This is in concert with similar regulations by the Park and the State of Utah.

Recommendation: The Department recommends THAT THE COMMISSION VOTE TO ADOPT THE PROPOSAL AS WRITTEN, ESTABLISHING A SPEARFISHING AND BOW AND ARROW SEASON FOR CARP AND STRIPED BASS DURING DAYLIGHT HOURS ON LAKE POWELL, UNLIMITED STRIPED BASS MAY BE TAKEN UP TO THIRTY INCHES IN LENGTH, ONLY ONE STRIPED BASS OVER THIRTY INCHES MAY BE TAKEN BY SPEARFISHING OR BOW AND ARROW.

The next recommendation has to do with a closure, something we don't frequently like to do, however, it does fit into our conservation strategies. This is for Fossil Creek which the Commission is likely aware of the considerable effort that is going on at Fossil Creek for restoration there.

Recommendation: The Department recommends THAT THE COMMISSION VOTE TO ADOPT THE PROPOSAL AS WRITTEN, CLOSING FOSSIL CREEK TO FISHING THROUGH JANUARY 1, 2007.

This principally would be to allow restoration and recovery of the fish populations in that creek, upon which time it will be reopened to the public for fishing.

Unless you have questions, I would hope that the Commission would entertain voting to adopt these amendments to Commission Order 40 and then I can offer a recommendation for adoption of Commission Order 40 for two years.

Chairman Chilton: Are there questions?

Commission Gilstrap: Madame Chairman, Larry with these changes what kind of communication are we going to try to implement to let people know of the changes both in the lakes/ponds and the regulations?

Mr. Riley: That is an excellent question. One of our principal mechanisms, of course, is our fishing regulations guide, which is drop shipped with all of our license dealers across the state. We use it frequently as a promotional item at many of our outreach activities, we also utilize media releases, both regularly scheduled and special releases. This would be going out as a media release likely next week to inform the public about the changes that will be coming up for next year. Throughout the year and following year, if this is adopted for two years, as we have decided, we will continually utilize those mechanisms and others to help inform the public. Another strategy that we can and do use, where there is any question about making sure that the public is aware of those regulations, is posting at the site, either with metal signs or in many of our urban lakes, we have kiosks that are put up with the cities where we can maintain information about license requirements and about bag and possession limits.

Chairman Chilton: Any further questions?

Commission McLean: Mr. Riley, with regard to the urban lakes and especially on those where urban lakes are ponds, where we would have reduction in possession and take, I see a lot of people fishing at those areas and they tend to become habituated to doing that and it would seem to me that we would need to do some special effort to make sure that the folks that are down

there understand that there are some significant changes so we don't have people inadvertently violating some of our possession and take limits.

Mr. Riley: That's an excellent point. Our urban fishing program is actually a great partnership with the municipalities or towns or communities that we enter into these agreements with. We have a great deal of opportunity for eyeball-to-eyeball contact with anglers. Both ourselves as we are carrying out stocking operations, creel survey operations, or field enforcement and the Park managers as well and park staff have great opportunities for eyeball-to-eyeball contact where folks can get the message. We can also get informational materials available at park sites where there may be a library or a refreshment stand or recreational facility. All of those are strategies that we can and do use.

Chairman Chilton: Further questions?

Motion: Gilstrap moved and Melton seconded THAT THE COMMISSION VOTE TO ADOPT COMMISSION ORDER 40: FISH AS AMENDED, ESTABLISHING OPEN SEASONS, OPEN AREAS, AND BAG AND POSSESSION LIMITS FOR CALENDAR YEARS 2005 AND 2006.

Vote: Unanimous

Director Shroufe: Items 4, 5, 6, and 7 are all being presented by Terry Johnson, our Nongame Branch Chief. It is a request to adopt Commission Orders 25, 41, 42, and 43. Commission can decide if they want to adopt them all at once after he goes through them or if you want to adopt them individually.

4. Request to Adopt Commission Order 25: Raptors.

Presenter: Terry B. Johnson, Nongame Branch Chief.

Terry Johnson: You have before you Commission Order 25, 41, 42, and 43 you have had an opportunity to review the memos. Commission Order 25, the Department recommends that we reduce the restrictions to the open areas for the harvest of western screech owls by adding the phrase "in Pima, Pinal, Graham, Santa Cruz, and Cochise counties." I would actually ask the Commission's forbearance as I would like to adjust that wording to ensure that we make it clear that we are only limiting the take of that species elevationally in those counties and in the other counties statewide, it would not have an elevational restriction. I can take care of that as we move the Commission Order through if the Commission approves it as recommended.

We also recommend that the age requirement be increased for harvest of eyas peregrine falcons from 10 days to 18 days. That's to address a sexing issue to ensure that people who take these falcons can distinguish between a male and a female, which is important to maintaining consistency in our harvest estimates over the next five years.

Next, remove wording from Peregrine Falcon Application procedures referencing the completion of the Management Plan, as it was completed in March 2004. So we have accomplished that.

The other changes are to simply change the wording and dates to make sure that they are consistent with the years that they will cover and with other Commission Order actions.

Recommendation: The Department recommends THAT THE COMMISSION VOTE TO ADOPT COMMISSION ORDER 25: RAPTORS, ESTABLISHING OPEN AREAS, SEASON DATES, AND BAG AND POSSESSION LIMITS FOR 2005 AND 2006, AS PROPOSED BY THE DEPARTMENT.

5. Request to Adopt Commission Order 41: Amphibians

Presenter: Terry B. Johnson, Nongame Branch Chief.

Again, you have the material and the background information on what comments we received through our public process for all of these Commission Orders. The recommendations are relatively simple in this case. We would recommend that the bag and possession limits be reduced to two (2) for barking frogs and all dates be changed, so they refer to the appropriate calendar year. Those are the only recommendations coming through the public process here and there are no blue slips at this moment in opposition or support for either this Order or Commission Order 25.

Recommendation: The Department recommends THAT THE COMMISSION VOTE TO ADOPT COMMISSION ORDER 41: AMPHIBIANS, ESTABLISHING OPEN AREAS, SEASON DATES, AND BAG AND POSSESSION LIMITS FOR 2005 AND 2006, AS PROPOSED BY THE DEPARTMENT.

6. Request to Adopt Commission Order 42: Crustaceans and Mollusks.

Presenter: Terry B. Johnson, Nongame Branch Chief.

Again, the background information is on the comment that was received through the public process. It was extensive and the recommendations are very simple. There are no substantive changes, just changed dates and wording to accommodate changes in other Commission Orders and the changes in calendar year.

Recommendation: The Department's recommendation for Commission Order 42 is THAT THE COMMISSION VOTE TO ADOPT COMMISSION ORDER 42: CRUSTACEANS AND MOLLUSKS, ESTABLISHING OPEN AREAS, SEASON DATES, AND BAG AND POSSESSION LIMITS FOR 2005 AND 2006, AS PROPOSED BY THE DEPARTMENT.

7. Request to Adopt Commission Order 43: Reptiles.

Presenter: Terry B. Johnson, Nongame Branch Chief.

Again, same process for soliciting comments. Extensive comment and dialog with the public on this Commission Order. There were a number of different recommendations that were put forward and considered carefully and out of this came the Department's recommendation that bag and possession limits be reduced to 4 per year for Western diamond-backed and Mojave rattlesnakes; for Mexican garter snake and narrow-headed garter snake, and ornate box turtles

that these species be added to the list of closed-season species and, again, all dates be changed so they refer to the appropriate calendar year.

Recommendation: The Department's overall recommendation is THAT THE COMMISSION VOTE TO ADOPT COMMISSION ORDER 43: REPTILES, ESTABLISHING OPEN AREAS, SEASON DATES, AND BAG AND POSSESSION LIMITS FOR 2005 AND 2006, AS PROPOSED BY THE DEPARTMENT.

I would be happy to answer any questions on any or all of these Commission Orders.

Chairman Chilton: Questions? There were none. Terry, I believe I clearly understand that you're closing the season on the Mexican garter snake.

Mr. Johnson: Madame Chairman, that is correct. We are proposing a closure of this season.

Motion: Melton move and Gilstrap seconded THAT THE COMMISSION ADOPT THE DEPARTMENT'S RECOMMENDATIONS ON ORDERS 25, 41, 42, AND 43.

Vote: Unanimous

8. Rehearing Request from Mr. Don Martin Regarding His 2004 Hunt Permit-Tag for Hunt Unit12B West.

Presenter: Steve K. Ferrell, Deputy Director

Madame Chairman, members of the Commission, I have in front of me a letter dated October 27, 2004, addressed to you Madame Chairman on Arizona Wildlife Outfitters letterhead. Mr. Martin asked that this letter be read into the record; however, I believe all four of you have received a copy of this and his request to actually have it read into the record is at your discretion Madame Chairman.

Chairman Chilton: Has anyone not received this letter? I think we all have. Would you like to make a recommendation?

Deputy Director Ferrell: The bottom line is that Mr. Martin asks that you reconsider your action in denying his request for relief; which consisted only of returning his previously accumulated bonus points, plus one for this year.

Recommendation: The Department recommends THAT YOU GRANT THAT REQUEST.

Commissioner McLean: I have a question. Steve, Mr. Martin alleges in his letter, that in the letter that went out to 805 folks that received the additional tags there was a statement that would have permitted them to not accept a tag, but to reject the tag, continue with their then present bonus points and receive an additional bonus point for this year. Is that accurate?

Deputy Director Ferrell: Madame Chairman, Commissioner McLean, it is.

Motion: Gilstrap moved and McLean seconded THAT THE COMMISSION VOTE TO ACCEPT THE DEPARTMENT'S RECOMMENDATION.

Vote: Unanimous.

9. Request to Approve Emergency Rule R12-4-125 to Establish Designated Hunting Areas Under A.R.S. § 17-316 in Game Management Units (GMUs) 30A, 30B, 31, and 32.

Presenter: Carlos Ramirez, Rulewriter.

On October 18, 2004, the Department's Tucson Regional Office received the hunt list for the 2004 Archery Sandhill Crane hunt for game management units 30A, 30B, 31, and 32. The list contained the name of an individual who has a history of disrupting wildlife management activities. This individual is allegedly a member of the Earth First Environmental Activist group and a convicted felon currently on federal probation. This individual has also been described as a long-time leader within the Animal Liberation Front, a criminal enterprise that the FBI classifies as America's most dangerous domestic terrorism threat. In addition, the Department has credible information indicating that other individuals may engage in conduct designed to sabotage the upcoming 2004 Sandhill Crane hunt, with activities planned to harass those hunters participating in the hunt. The Department anticipates that such conduct will result in physical confrontations and injury between hunters and individuals opposed to hunting.

In response to this threat, the Department proposes to designate portions of GMUs 30A, 30B, 31, and 32 on public land to allow for enforcement of A.R.S. § 17-316. This statute authorizes a peace officer to order individuals to desist from prohibited conduct and to leave an area. Moreover, A.R.S. § 17-316 specifically prohibits the intentional interference of a hunt by harassing, driving or disturbing game animals. Although a peace officer can respond to potential threats through statutes prohibiting disorderly conduct, the disorderly conduct statutes do not address all the conduct prohibited by A.R.S. § 17-316. Therefore, the Department finds that establishing a designated hunt area as required by A.R.S. § 17-316 is necessary to appropriately respond to a public safety concern. The Department is pursuing an emergency rule with an immediate effectiveness of this rulemaking in order to preserve the public peace, health, and safety, as stated in A.R.S. § 41-1026(A)(1) and A.R.S. § 41-1032(A)(1).

Chairman Chilton: Is there discussion?

Commissioner McLean: This would be solely for the 2004 Sandhill Crane hunt, we're not establishing this as a permanent rule?

Mr. Ramiriz: Yes, that is correct.

Commissioner McLean: Mr. Odenkirk, are you satisfied that we don't need to sunset it?

Mr. Odenkirk: It will sunset on its own by virtue of being an emergency rule. It will expire if the Commission does not take further action to reinitiate rulemaking. So, to allow it to just sunset by virtue of the statutes is sufficient.

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Commissioner McLean: It will sunset at the end of the 2004 archery season?

Mr. Odenkirk: It will have no more affect at the end of the 2004 season, but it will sunset by the timeline that is provided in the statute that requires an agency to start formal rulemaking after an emergency rule is adopted.

Mr. McLean: And do we need to do anything in addition to that which we have just done to make a record to satisfy the emergency nature of this proceeding?

Mr. Odenkirk: This rule will be reviewed by the Attorney General's office. By statute the Attorney General's office has authority to approve this rule. They will make the determination whether the record is sufficient to demonstrate an emergency. I have been consulting with the lawyers who will work on this to try to satisfy that requirement. They cannot predetermine a rule, but they have provided some guidance on how we can satisfy the showing of emergency.

Mr. McLean: My understanding is that we just found out about this in a short enough time period, that we did not have adequate time to go through a full and formal rulemaking procedure, and, therefore, the Department has elected to bring this to us as an emergency matter because of the time constraints involved. Is that essentially correct?

Mr. Odenkirk: There are two aspects to an emergency rule. One is the timeliness of the rule, did the agency have time to adopt a rule if it had been more diligent. Certainly not in this case. The other aspect is whether or not you can establish some reason for an emergency, such as potential threat to public health and safety. That is what we have established in the rule, that there is the potential for physical confrontations and injury to individuals participating in the hunt.

Commissioner McLean: Thank you Mr. Odenkirk. With that I am prepared to make a motion if there are no other questions or comments.

Chairman Chilton: I have a question. Mr. Odenkirk, I notice that this person is a convicted felon currently on federal probation. Can you use weapons when you are a convicted felon on federal probation?

Mr. Odenkirk: Madame Chair, there are state and federal laws that prohibit the possession of certain weapons depending upon the type of conviction. I believe under state law the only way you lose your right to possess a weapon is if you have been convicted of a particular offense involving a weapon. Federal law may differ in this area. I believe this is an archery hunt and the possession of archery equipment may not be prevented by virtue of being a convicted felon.

Motion: McLean moved and Gilstrap seconded THAT THE COMMISSION VOTE TO APPROVE EMERGENCY RULE R12-4-125 TO ESTABLISH DESIGNATED HUNTING AREAS UNDER A.R.S. 17-316 IN GMUs 30A, 30B, 31, AND 32.

Vote: Unanimous.

10. Call to the Public.

Dell Owens of Phoenix representing Bow Fishing in AZ. My main source of recreation and has been since the early 80s is bow fishing. Bow Fishing tournaments at Alamo Lake and Roosevelt Lake. Predominately I like the hunting of tilapia. But recently I found out that most of the southern states allow bow fishing for catfish. They have resources much greater than ours so I

wouldn't expect us to be comparable to them. But I would like to ask the Commission if they would consider maybe a daily bag limit of 2 catfish, excluding flathead. I don't think that should be included. When you bowfish a lot at night, you see a lot of nice catfish, just two catfish, 5-7 pounds would make a great meal for a family. I don't think that we would deplete any of the population of the catfish to speak of at all. I think you catch a lot more than that on a fishing pole. But it would be nice to be able to take a couple of catfish a day and have something for dinner. But I also realize that there may be some opposition to it as far as people thinking that it's not a fair thing, but I can assure you that taking a catfish with a bow and arrow is not a real easy thing to do. I don't think that flatheads should be allowed, I don't think you should be shooting 40-50 pound fish, something that you can't catch and release. I really appreciate your time. Thank you.

Commissioner Gilstrap: Want to explain to Mr. Owens that when you address the Commission in this Call to the Public and the subject is not on the agenda, we can't interrelate in dialog. I see Mr. Riley approaching the podium.

Mr. Riley: Thank you for the opportunity. I Just wanted to bring to your attention, certainly it's an intriguing proposal, and one that we are very willing to look at and analyze. However, the range of species that can currently be taken by bow and arrow, or gig, or spear, or spear gun is specified in rule. I could not open a season right now for bow fishing for catfish under Commission Order because it is not provided for in rule. As you are painfully aware, the rulemaking process is a bit longer than amending and adopting Commission Orders. I would be very happy to work with Mr. Owens to look into this. We can put it into perhaps the regular rules review cycle for Article 3. Does that meet with your approval Madame Chairman?

Chairman Chilton: Yes.

Pete Cimellaro: resides in Phoenix, AZ and represents the Wildlife Conservation Council and its member organizations. Good afternoon. I have a letter and attachment here to present to the Commission and Department. I would like to read them into the record. A copy of said documents is included as part of these minutes.

Since there are already raffle permits for sheep and elk, this may be a situation where those permits could be used in another way. That was one of the discussions that was between all organizations. Indeed, the Elk Society felt that it might be a situation where they would like that to be left open and not specifically dedicated to a raffle. So, perhaps, if we needed two auction permits, the second one could be put into a raffle. On the Sheep Society's behalf, they were looking at probably establishing two raffles. One for a bighorn and the current one for desert bighorn. The other option, of course, on their end, would be to create an auction bighorn tag, not a raffle. But, they would also like that door left open. We would ask for some flexibility on behalf of the elk and sheep tags. We recognize the Commission has authority to designate them to whomsoever and howsoever, but we think this would be a wonderful opportunity to promote the organizations working together for the benefit of all of our species and raise a considerable amount of money. It is exciting for the deer, buffalo, and antelope in particular, because with the establishment of a raffle like this, the sky is the limit. And, with us working with each other, instead of working on our own immediate raffles, by crossing over and working these lists together and promoting this together, and we would encourage as many organizations that

wanted to sign on, this could be really exciting. That is our proposal and we would certainly like to see the Commission entertain this and, perhaps, move this in the coming legislative session..

Chairman Chilton: Thank you Pete. As usual, we cannot comment, other than to say thank you. Other comments?

Commissioner Gilstrap: I can address this to the Director. If we so want to, can we have this on December agenda under legislation?

Director Shroufe: That was our intent in October, but because of the specific proposal, we are going to make it a separate agenda item so that the public will be aware that you are going to be talking specifically about increasing special big game tags.

Chairman Chilton: Any further comments? If not, thank you Pete.

Director Shroufe: The only item left on the agenda today is the Executive Session, which was postponed to the end of the meeting. With that, Madam Chair, unless there are other questions and comments about the agenda items, we are finished with the agenda.

Motion: Melton moved and McLean seconded THAT GO INTO EXECUTIVE SESSION.

Vote: Unanimous.

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Meeting adjourned at 1:35 p.m.

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Sue Chilton, Chairman

W. Hays Gilstrap, Member

Joe Melton, Member

Michael M. Golightly, Member

William H. McLean, Member

ATTEST:

Duane L. Shroufe
Secretary and Director